DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0306
CORPORATE INCOME TAX
FOR TAX PERIODS: 1998

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Issue

1. Adjusted Gross Income Tax-Addback of Property Taxes

Authority: IC 6-3-1-3.5 (b).

Taxpayer protests the add-back of property taxes.

Statement of Facts

Taxpayer is a manufacturer of automobiles. After an audit for the tax period 1998, Taxpayer was assessed additional adjusted gross income and supplemental net income taxes. Taxpayer timely protested the assessments and a hearing was held. Further facts will be presented as necessary.

1. Adjusted Gross Income Tax- Addback of Property Taxes

Discussion

Taxpayer's protest concerns the add back of property taxes. Taxpayer calculated its Indiana tax return based upon its calculation of its adjusted gross income pursuant to IC 6-3-1-3.5 (b) as follows:

> In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:
> (1) Subtract income that is exempt from taxation under IC 6-3 by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.
(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.
(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

In calculating its adjusted gross income, Taxpayer did not add back the amount of property taxes which were classified for federal purposes as costs of goods sold. Taxpayer argues that the property taxes which are a component of costs of goods sold and should not be added back since they are not deductions allowed pursuant to Section 63 of the Internal Revenue Code as follows.

> (a) In General. – Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

The capitalized property taxes, as part of the cost of goods sold, are deducted from Taxpayer's total receipts in determining Taxpayer's gross income. Therefore they are included in the gross income. When deductions are taken from the gross income to determine the "taxable income" as defined by this statute, the inclusion of the deductions in the gross income effectively includes those deductions in the term "taxable income" as defined by this statute.

Taxpayer contends that it does not have to add back property taxes because they are defined as nondeductible from "taxable income" as defined by the statute pursuant to the following provisions of Section 263 A as follows:

(a) Nondeductibility of Certain Direct and Indirect Costs.
(1) In general. –In the case of any property to which this section applies, any costs described in paragraph (2)—
(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and
(B) in the case of any other property, shall be capitalized.
(2) Allocable costs. – The costs described in this paragraph with respect to any property are-
(A) the direct costs of such property, and
(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

Taxpayer is correct in that this provision does not allow a deduction of the property taxes after the determination of "taxable income" as defined by this statute. That does not negate the fact, however, that the property taxes were deducted in the determination of the gross income portion of the formula for determination of the "taxable income" as defined by the statute. Therefore the property taxes were effectively deducted and must be added back.

Finding

Taxpayer's protest is denied.

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